

Internal Revenue Service

Department of the Treasury

District
Director

1100 Commerce St., Dallas, Texas 75242

Date: MAR 4 1997

Employer ID Number:

Person to Contact:

Telephone Number:

Refer Reply To:

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates you were created by a trust agreement between [REDACTED] (Settlers), a commercial bank (Trustee), and [REDACTED] (Beneficiary) on [REDACTED]. The purposes stated in your organizing document are:

"To hold, manage, invest and reinvest the trust property and devote and apply the trust net income exclusively for charitable and educational purposes."

Article II of your organizing document states that the settlers authorize and direct your net income to be used by the beneficiary to acquire, equip, improve, operate, and maintain a park system and to acquire, develop, and maintain areas for the promotion, encouragement and enjoyment of all kinds of outdoor activities and sports.

Article III of your organizing document states that the trustee shall pay, at least annually, [REDACTED] percent of your net income to the beneficiary for the purposes set forth in Article II, and shall reinvest [REDACTED] percent of your net income in the corpus.

The assets assigned to you by the settlers are [REDACTED] percent of the corpus of their charitable remainder trust, which consists of [REDACTED] shares of common stock valued at \$[REDACTED] and the remainder interest of [REDACTED] valued at \$[REDACTED]. [REDACTED] is conveyed to you but has been retained and reserved in the settlers' life estate.

[REDACTED]

In your Form 1023, you state that you will be funded upon the deaths of the settlors. At such time the trustee will invest your assets and will pay [REDACTED] percent of your net income to the beneficiary. No income and disbursement, other than trustee compensation, are shown in your proposed budgets.

In your letter dated January 15, 1997, you state that the income presently generated from the assets conveyed to you is approximately \$[REDACTED] a year. The income generated from those assets are not assigned to you until the deaths of the settlors.

You furnished a copy of warranty deed showing [REDACTED] was conveyed to you on [REDACTED]. The grantors, [REDACTED] have been assigned the full possession, benefit, use, rents, revenues, and profits of the property for the remainder of their lives.

You request a definitive ruling under section 509(a)(3) of the Internal Revenue Code as a supporting organization to [REDACTED]. You state that the annual budget for city parks and playground activities is \$[REDACTED]. The funding is currently provided by the [REDACTED]. Upon the deaths of both settlors, you should generate a minimum of \$[REDACTED] per year unless the value of the assets declines significantly.

Your letter of November 5, 1996 states that if you were nominally funded, you would immediately hold income-producing assets. Your Form 1023 states that you do not and will not establish any fundraising program. The sole source of financial support will be investment income upon the receipt of certain property.

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from Federal income tax for organizations organized and operated exclusively for charitable, religious, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes specified in that section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes specified in section 501(c)(3). An organization will not be regarded as operated exclusively for one or more exempt purposes if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the Regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator and his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.509(a)-4(a)(2) of the Regulations provides that a section 509(a)(3) organization must be organized and at all times thereafter operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in section 509(a)(1) or (2).

Section 1.509(a)-4(i)(3)(iii)(b) of the Regulations provides that the amount of support received from a supporting organization may be sufficient to meet the attentiveness requirements if it can be demonstrated that, in order to avoid the interruption of the carrying on of a particular function or activity, the beneficiary organization will be sufficiently attentive to the operations of the supporting organization.

In Revenue Ruling 81-94, 1981-1 C.B. 330, an organization used primarily as a vehicle for handling its founder's financial transactions, is held not exempt under section 501(c)(3) of the Code. The founder transfers her assets and income to the organization. In return, the organization provides living allowance to maintain her living. The ruling states that the organization is operated to serve the private interests of a designated individual rather than a public interest.

In Revenue Ruling 67-5, 1967-1 C.B. 123, a foundation formed to enable the creator and his family to engage in financial activities which are beneficial to them, but detrimental to the foundation, is held not exempt under section 501(c)(3) of the Code. The foundation owns non-income producing assets and is prevented from carrying on a charitable program commensurate in scope with its financial resources. The ruling holds that the use of the foundation as a vehicle for activities advantageous to its creator and his family is an indication that the foundation serves the private interests of its creator and his family. These activities not only result in favorable tax consequences to the creator and his family, but their effect has also been detrimental to the charitable purposes of the foundation.

In Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279 (1945), petitioner was held not to be exempt from Federal taxes as an

[REDACTED]

organization organized and operated exclusively for scientific or educational purposes. The Supreme Court of the United States stated that in order for petitioner to fall within the claimed exemption, it must be devoted to educational purposes exclusively. The presence of a single noneducational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes. Since an important, if not primary purpose, was to promote the business community, as well as ethics, it was not entitled to be exempt from taxation under the Act in favor of religious, charitable, and educational organizations.

On the basis of the information you supplied, your present and only activity is the possession of future rights to certain assets. Those assets, including [REDACTED], are continuously for the use and enjoyment of the settlors [REDACTED] during their life time. Your assets will not be used to benefit the general public of [REDACTED] until the deaths of both settlors. Therefore, you are not at all times operated exclusively for the benefit of the public.

As stated in Regulations 1.501(c)(3)-1(d)(i)(iii), supra, an organization is not operated exclusively for one or more exempt purposes unless it serves a public interest. Since you will conduct no activity which serves an exempt purpose until the deaths of both settlors, and your future activity, the making of distributions to [REDACTED], cannot be foreseeable within a reasonable period of time, you are not operated exclusively for charitable or other exempt purposes.

It appears that the income generated from the charitable remainder trust of [REDACTED] is distributed in a form of annuity or unitrust amounts to them or other persons. You are assigned the right to possess one half of the remaining assets of that charitable remainder trust when all beneficiaries are deceased. The private residence conveyed to you is and will be continuously for the use and enjoyment of [REDACTED] until they pass away. These arrangements not only benefit the [REDACTED], but also prevent you from primarily engaging in activities which accomplish one or more purposes. The benefits received by [REDACTED] are substantial and are not incidental to the accomplishment of any exempt purposes.

In light of the above, you are used primarily as a vehicle to handle [REDACTED] financial and estate planning. Since you are used as a vehicle for activities advantageous to [REDACTED], you serve the private interests of your creator and his family. Therefore, you are not operated exclusively for charitable or other exempt purposes. See Regulations 1.501(c)(3)-1(d)(1)(iii), Revenue Ruling 81-94 and Revenue Ruling 67-5, supra.

You state that if you were nominally funded, you would hold income-producing assets. However, the amounts of income to be generated from this nominal funding will be very nominal. After the deduction of trustee fee, you might have no income to be distributed to [REDACTED]. If all income to be

[REDACTED]

generated from this nominal funding will be distributed to [REDACTED], the amounts of your distributions will still be very nominal. Regardless of the purposes or motivation behind the nominal funding, the amounts of your support provided to [REDACTED] will not be commensurate in scope with your financial resources. Therefore, you are not operated exclusively for charitable or other exempt purposes even though you were nominally funded; see Revenue Ruling 67-5, supra.

As long as [REDACTED] are the income beneficiaries of the charitable remainder trust, and as long as [REDACTED] are residing in the real property conveyed to you, regardless of whether you are nominally funded, you are operated for a non-exempt purpose that is substantial in nature. That purpose is to serve the private interests of your creator and his family. As stated in Better Business Bureau of Washington, D.C., Inc., supra, the presence of a single nonexempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

Accordingly, we conclude that you do not qualify for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Contributions made to you are not tax deductible. You are required to file federal income tax returns on Form 1041 reporting the amounts of your taxable income and tax due.

We also conclude that you are not a supporting organization described in section 509(a)(3) of the Code. [REDACTED] has not been supported by you since your inception. Therefore, you are not at all times operated exclusively for the benefit of [REDACTED]. If you were nominally funded, the amount of income to be derived from the funding would be very nominal, and therefore the amounts of your support would not be sufficient to avoid the interruptions of park operations and playground activities. Regulations 1.509(a)-4(i)(3)(iii)(b), supra.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Code as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted

administrative remedies available to it within the Internal Revenue Service."

- If this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 6104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

If you have any further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,



Bobby E. Scott
District Director

Enclosures:
Publication 892
Form 6018

Case Number [REDACTED]	Date of Latest Determination Letter
Employer Identification Number [REDACTED]	Date of Proposed Adverse Action
Name and Address of Organization [REDACTED] [REDACTED] [REDACTED]	

I consent to the proposed adverse action relative to the above organization as shown by the box(es) checked below. I understand that if Section 7428, Declaratory Judgments Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action.

Nature of Adverse Action

- ☒ Denial of exemption
- ☐ Revocation of exemption, effective
- ☐ Modification of exempt status from section 501(c)() to 501(c)(), effective
- ☐ Classification as a private foundation (section 509(a)), effective
- ☐ Classification as a non-operating foundation (section 4942(j)(3)) effective
- ☐ Classification as an organization described in section 509(a)(), effective
- ☐ Classification as an organization described in section 170(b)(1)(A)(), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.
If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to declaratory judgement under section 7428.

(Signature instructions are attached)

Name of Organization	
Signature and Title	Date
Signature and Title	Date